The second reason advanced by the learned President for not accepting petitioner's innocence was that he was not satisfied that petitioner "never looked into the tool boxes". The learned President thus disagreed with the submission made by Counsel for petitioner that car owners do not normally inspect their tool boxes though apparently the question was never put to petitioner himself. But even if the learned President's decision on this point is correct it still does not go far enough in that it does not decide that petitioner inspected the tool boxes after they had been adapted to provide the secret compartments. As it appears probable that petitioner's employees obtained the opium during their last visit to Singapore, whether in Singapore or somewhere on the route is immaterial, it is at least a reasonable assumption that the tool boxes were adapted then for the express purpose of conveying the opium so obtained. In such case the petitioner would have no opportunity to inspect the boxes as the lorry was seized before it reached the end of the return journey from Singapore. In my opinion therefore there was no proof of petitioner's complicity either in the actual commission of the offence or in the adaptation of the tool boxes for the purpose of committing the offence. I agree with the decision of Russell J. in *Cheng Kee Huat and another v. Public Prosecutor*[1] that, in the case of a highly penal provision like that contained in paragraph 17(1) of the Opium and Chandu Proclamation, it is neecessary to establish some degree of complicity on the part of the owner of a vehicle before the forfeiture of the vehicle can be ordered.

I therefore direct that the order of the learned President confirming the forfeiture of the lorry be set aside and that the lorry registered as M 1067, and the subject matter of this reference, be returned to petitioner. I make no order as to costs.

Order of forfeiture set aside.

PUBLIC PROSECUTOR v. GOH AH MOI (f).

[Orig. Cr. Juris. (Pretheroe, J.), April 28, 1949]

[Malacca — Cr. App. No. 3 of 1949]

Common Gaming Houses Ordinance, S.S. Sec. 4 — Principles in assessing the quantum of punishment.

In this case the respondent was convicted on two charges viz:—

(a) assisting in carrying on a Chap Ji Kee lottery contrary to s. 4(c) of the Common Gaming Houses Ordinance; and

(b) assisting in carrying on a Wah Hoay lottery also contrary to the above-mentioned section.

The respondent was convicted on both charges and was fined $150/- on the first charge and $100/- on the second charge. The Public Prosecutor appealed against both these sentences on the ground that they were inadequate.

Held, that in the case of any conviction under s. 4 of the Ordinance the penalty imposed should be such that it will take away from the convicted offender the desire to offend in a similar manner again. Quite clearly a balance of income left in a promoter's pocket after payment of a fine will have precisely the opposite effect and for a Court to leave any such balance would be a wrong application of the accepted principles.

Case referred to:—

(1) *Public Prosecutor v. Sim Moh Ee* (1946) M.L.J. 88.

CRIMINAL APPEAL.

Good (D. P. P.) for the Appellant.

Respondent in person.

Pretheroe, J. : — The respondent in this appeal was convicted on two charges viz :—

(a) assisting in carrying on a Chap Ji Kee lottery contrary to section 4(c) of the Common Gaming Houses Ordinance; and

(b) assisting in carrying on a Wah Hoay lottery also contrary to the above-mentioned section.

She was convicted on both charges and was fined $150/-, or three months rigorous imprisonment in default of payment, on the first charge, and $100/-, or three months rigorous imprisonment in default of payment, on the second charge.

The Public Prosecutor appealed against both these penalties on the ground that they were inadequate and when arguing the appeal Mr. Good pointed out that the penalties for this offence as commonly imposed in the Settlement of Malacca were much smaller than those commonly imposed in the adjoining States. He agreed that the main object of this appeal was to secure a pronouncement regarding the penalty to be imposed in similar cases.

It is unnecessary for me to comment in general on the principles involved in assessing the quantum of punishment as they are fully considered in paragraph 363 *et seq.* in Part VII of volume 9 of Halsbury's Laws of England (Hailsham Edition). These principles were also considered by Laville J. in *Public Prosecutor v. Sim Moh Ee*[1].

When applying these principles to a conviction under the Common Gaming Houses Ordinance it must be borne in mind that the Legislature has drawn a sharp distinction between complicity in organising or conducting a lottery on the one hand and the mere participation in a lottery on the other hand. The maximum penalty prescribed for the former is a fine

not exceeding $3,000/- or imprisonment of either description for twelve months while the maximum for the latter offence is a fine not exceeding $25-/.

Now, turning to the facts of this particular appeal, the respondent was convicted on two charges of assisting in carrying on a public lottery i.e. she has been found guilty of committing two offences in the more serious category. But in his grounds of judgment the Magistrate has confined his comments to two unsworn statements made by the respondent regarding her means and to the not very helpful comment that respondent "does not appear to be well off". In such circumstances she could hardly be expected to flaunt an array of jewellery before the Court and the opinion formed by the Magistrate can be little more than mere speculation. There is little in the record therefore to enable this Court to apply the principles to which I have already referred. In view of the main object of this appeal, as stated by Mr. Good, I do not propose to send this case back for re-trial. I will content myself with the remark that in the case of any conviction under section 4 of the Ordinance the penalty imposed should be such that it will take away from the convicted offender the desire to offend in a similar manner again. Quite clearly a balance of income left in a promoter's pocket after payment of a fine will have precisely the opposite effect and for a Court to leave any such balance would be a wrong application of the accepted principles.

For the reason already stated this appeal is dismissed.

Appeal Dismissed.